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SUBJECT: YESTERDAY'S CPA IN TODAY'S SUDAN

REF: A. KHARTOUM 382

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Classified By: Charge d' Affaires Alberto M. Fernandez, reasons 1.4(b) and (d)

11. (C) Summary: Three months after the four-year anniversary of the signing of the Comprehensive Peace Agreement (CPA) ending the second civil war between northern and southern Sudan, all signs indicate a worsening of prospects for implementation of the agreement over the final two years of the interim period. Major benchmarks in the agreement are seriously behind schedule or are not being met. In some cases, the National Congress Party (NCP) and the Sudan Peoples' Liberation Movement (SPLM) are negotiating new terms of agreement - which supersede the CPA - to fit today's challenges, such as with the June 2008 Abyei Roadmap and the linked discussions on 2009 elections and the Southern Sudan Referendum Law. Due to external constraints caused by the International Criminal Court indictment of Government of National Unity President Al-Bashir, and a deepening economic crisis coupled with drastically fallen oil prices which has resulted in a serious budget crunch (particularly affecting the South), there is an enormous amount of pressure on the peace partners that could further endanger implementation of the CPA. Even as the international community continues to pressure the parties to honor their CPA commitments through bilateral engagement and multilateral fora such as the Assessment and Evaluation Commission (AEC), the CPA is slowly withering due to lack of consistent progress, which threatens to upend an increasingly precarious peace. The best hope of convincing the parties to see this agreement through and avoid a return to war is for the USG to deepen its political engagement with the SPLM and the NCP on critical milestones such as elections, borders and referendum. In the post-ICC environment, a U.S. offer of improved relations with Sudan may be the only incentive that will keep the NCP regime moving in the right direction and avoid a return to war

against an increasingly unstable Government of South Sudan (GOSS). During our discussions with the CPA parties, the USG should stress the need to plan now for post-2011 scenarios (including wealth-sharing), presented as options so as not to prejudge the outcome, either for unity (highly unlikely) or a probable vote for separation. End Summary.

POWER-SHARING PITFALLS

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¶2. (C) It appears that the CPA parties have reached a deal to accept census results but maintain current power-sharing arrangements following elections, which obviates that need to design a strategy to respond to an SPLM rejection of the census results (ref K). Per the CPA, the percentages for representation of the North and the South at the national level (Parliament) should be based on the population ratio and confirmed or adjusted on the basis of the census results.

Because the South appeared to have good reason for rejecting the results, the NCP has likely compromised on this issue in order to keep early 2010 elections on track.

¶3. (C) While a snap election appears unlikely based on the National Electoral Commission's (NEC) recent letter to the Presidency stating that elections could not be feasibly organized until 2010, there remains a possibility that Presidential elections could be separated from Parliamentary elections and held sooner than 2010. While the NCP would certainly benefit from an early election in order to give President Bashir legitimacy soon after his indictment by the ICC, at the moment it does not appear that the ruling NCP will push for snap elections. Preparation for national elections has been seriously delayed due to an long overdue national electoral law and the painfully slow establishment

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of a functional NEC (ref F). UNMIS Chief Electoral Affairs Officer Ray Kennedy recently told USG officials that it would be "mindbogglingly difficult" to conduct elections in 2009 (as was intended by the CPA) given the amount of preparation time that has been lost. The next hurdle to overcome is reformed legislation on media/press and national security, which is critical to fostering a free and fair playing ground for elections. With Parliament returning to work on April 13, it is possible that we will see progress on these laws, but the NCP will likely require some encouragement.

Meanwhile a severely stressed SPLM is unprepared (both financially and politically) for elections. Its focus is largely on the Southern Sudan Referendum in 2011 and holding a precarious GOSS together. The SPLM and the NCP are currently negotiating on a Southern Sudan Referendum Law. In return for agreement on the law, the NCP is looking for post-2011 arrangements to be nailed down now (ref G). It is very possible that the SPLM would be willing to trade a no-contest election (particularly if they are only at the GNU Presidential-level) for ironclad assurances on a clean referendum.

¶4. (C) It is increasingly unlikely that the North-South border will be demarcated in 2009, something that was supposed to have been settled over a year ago. The technical work has long been completed but political tradeoffs remain to be made. In CG's private discussions in Juba with advisors on the Border Commission, they indicated that the two sides are deadlocked on the border and show little willingness to compromise or adjust their maximalist positions. AEC advisors in Khartoum told poloffs in late February that the Border Commission members are deadlocked over procedure more than substance; i.e. - how to move forward when a specific part of the border is in dispute. Without settled borders, not only is the potential for renewed fighting along an unstable and militarized border stretching more than a thousand kilometers a real threat, but electoral districts cannot be properly demarcated, again threatening the completion of the proposed elections in 2009.

AGITATED ABYEI

15. (C) The complete and utter failure of the Abyei Protocol is the CPA's greatest disappointment thus far. For three years, by refusing to appoint a local administration, the NCP left the region ungoverned. Furthermore, it rejected the findings of the 2005 Abyei Boundary Commission (ABC) and failed to agree on a compromise arrangement. This neglect sparked violence in Abyei in May 2008, which led to the flight of thousands residents from the area. Seven months after the SPLM and the NCP agreed on a new arrangement for the region - the Abyei Roadmap - the region remains effectively without an administration, due to the failure to fund the Interim Administration that the Roadmap established (ref N). This provides tinder for another violent flare up. We also should expect one or both of the parties to reject the internationally-arbitrated determination of Abyei's borders (expected to be released in mid-2009,) and that this will lead to yet another CPA crisis. The aggrieved and heavily-armed Misseriya Arab nomads have already signaled their rejection of any Permanent Court of Arbitration (PCA) decision that doesn't favor it. The USG and other international partners have repeatedly encouraged SPLM and NCP officials to reach a political settlement of Abyei's borders that both those partners could accept. While the parties acknowledge that this is a good idea, there is no evidence to suggest that they are engaging to reach such an agreement. And while the voices of the Ngok Dinka are well represented in the SPLM's senior leadership, the Misseriya are represented by no one.

SUFFERING STABILITY IN SOUTHERN KORDOFAN

16. (C) The serious lack of progress on integration in Southern Kordofan and heightened instability as a result of the NCP's alleged arming of Arab tribes in the region demonstrate that neither party has been committed to bringing peace dividends to this battered region (ref E). Integration of formerly-controlled SPLA/M areas only began in August 2008 when a few thousand police were identified for national police training. Poloff's latest trip to the state in January 2009 revealed that police integration has not made significant progress since then and that civil service

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integration is effectively stalled (ref E). The state is naturally volatile because it teeters on the 1-1-56 North/South border, serves as a staging area for troop redeployment, is home to a disputed oil area and sensitive migration routes, and is susceptible to rebel spillover from South Darfur. The lack of capacity and leadership from both SPLM and NCP top officials in the state has hampered progress on CPA implementation in the state (ref E). Many citizens in Southern Kordofan, and in particular the SPLM Nuba, are unaware that the popular consultation slated for 2011 will not provide them with the right to choose between unity or separation with northern Sudan. There seem to be few local politicians setting the record straight on what the popular consultation is and how its result will (or will not) affect the lives of citizens in that state (this is partly because there has been no will to define yet it). Recent International Crisis Group (ICG) reports on Southern Kordofan have warned that it is just a matter of time before a break-out of violence in the region occurs. With the GoS' decision on 4 March to expel 13 INGOs from the North, there is even less hope for peace, reconciliation, and development in this area (ref B).

SUPERFLUOUS SECURITY

17. (C) The late February 2009 Malakal fighting, as well as the May 2008 outbreak of fighting in Abyei, clearly highlight the fragility of the CPA's military and security arrangements (reftels F and I). Joint Integrated Units (JIUs), established to provide security for oil fields and other sensitive areas along the 1-1-56 border during the interim period and to be the nucleus for a unified post-2011

Sudanese military, remain joint and integrated in name only. Both the Abyei and Malakal incidents began with conflicts between southern elements within the SAF contingent of the JIUs and the Sudan People's Liberation Army (SPLA). The JIUs lack a joint doctrine and training, have been chronically and seriously under funded by Khartoum, lacking the resources to improve often squalid living conditions, let alone carry out the missions for which they were envisioned. Furthermore, the integration of thousands of members of other armed groups (OAGs) into the SAF and the SPLA has not fully solved the problem of tribal militias and nebulous armed organizations such as the Petroleum Police. The NCP still uses its Popular Defense Force (PDF) to stir up trouble in sensitive areas (particularly the Nuba Mountains). To further destabilize these areas, Arab tribes have allegedly been armed by the NCP. GoSS officials have told USG officials that a spate of increasing inter tribal clashes in the South, compounded by resurgent LRA activities following a failed attempt to kill Joseph Kony last December, is attributed to covert NCP efforts to destabilize the South. While the proof of this is lacking, it would fit a pattern of past behavior by the NCP to try and undermine the GoSS. CDA Fernandez has repeatedly warned NCP officials in Khartoum that it is playing a very dangerous game by trying to destabilize its partner in the South. He stated that the USG would blame the NCP if the GoSS were to fail because of Khartoum's machinations. Another key part of the CPA, North/South disarmament, demobilization, and reintegration (DDR) only began in earnest in early 2009 and has so far been limited to Blue Nile State.

WARY WEALTH-SHARING

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¶8. (C) Wealth-sharing has been by far the most successful element of the CPA, but has not been without its problems. While the transfer of revenues by the GNU Ministry of Finance to the GoSS has gone relatively smoothly, other aspects, such as the establishment of a National Land Commission to adjudicate local property rights, continue to lag. With the GNU over 60 percent and the GoSS over 90 percent dependent on oil exports for budget revenues, wealth-sharing will be seriously challenged by the falling price of oil and the global economic downturn (reflets J and M). Based on current prices, the GoSS share of oil revenues already is projected to fall significantly below budgetary appropriations. Transfer arrears from the GNU to the GoSS are accumulating again after having been largely paid off in 2008. With revenues shrinking, the GNU may be tempted to short the south on transfers. More fundamentally, with the oil windfall over, both the GNU and GoSS will be faced with tough choices, for which neither is fully prepared. The era of buying social peace with liberal government spending is drawing to a

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¶10. (C) Overshadowed in the West by Darfur, the CPA is under increasing pressure as both the NCP and the SPLM confront tremendous challenges, the former the ICC and the latter a serious budget crisis and internal political paralysis, which could lead either one to do something to disrupt the fragile north/south peace sooner rather than later. Time and money for CPA implementation are in short supply and the parties may prefer to abandon the CPA rather than play a painful zero-sum game - unless we can ensure that wealth sharing will continue post-2011 and demonstrate that it is in the interests of both parties to remain at peace. To be as effective as possible in convincing the SPLM and the NCP to continue with the CPA - and to effectively advocate for important (potentially) transformative milestones such as the elections and the referendum - the USG should engage more deeply and at a higher level with the parties - as SE Gration has done during his first visit to Sudan.

¶11. (C) As we have attempted to outline in this cable, there are many destabilizing factors that could upend the CPA at any time. With the end of the CPA period fast-approaching, the parties may be tempted to engage in political brinkmanship to attain their objectives, which could quickly result in a ill-considered return to war. Over the last

several years U.S. policy on Sudan has been on auto-pilot, with the U.S. repeating a mantra of "CPA implementation and Darfur peace" without changing the dynamic by engaging more deeply with the parties. In the post-ICC environment, deeper U.S. engagement may be the only factor that can push the NCP regime to do the right thing and the SPLM to deal. The U.S. offer of eventual normalized relations with Sudan (including

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removal from the State Sponsors of Terrorism List and the gradual lifting of U.S. economic sanctions) is a powerful incentive for this regime - a potential game-changer in the dynamic of Sudanese politics - and will encourage the government not only to make peace in Darfur, but allow for (more) credible elections and a (more) peaceful referendum on southern secession. These are objectives worth negotiating for, rather than roll the dice on peace or war by continuing to run Sudan policy by avoidance of deep engagement due to fear of criticism from Darfur activists. Let's roll up our sleeves, engage deeply with the parties, and begin negotiating to ensure that Sudan continues on a path of relative stability and peace (and possibly democratization) rather than watch helplessly from the sidelines while Darfur festers and the CPA slides into chaos and violence - a violence that could dwarf what happened in Darfur.

FERNANDEZ